MST

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.745 OF 2005

Mahesh Girdharilal Panjwani
and others ... Appellants

versus

Mohanlal Jethanand Kalyani
(Jaisinghani) and another ... Respondents

Mr.K.K.Malpathak for appellants.

CORAM : A.P.DESHPANDE, J.

DATE : 12TH JULY 2007

PC :

1. It is the case of the appellants who are legal representatives of one Girdharilal Panjwani that their father Girdharilal was the Chief Promoter of a co-operative housing society and under the bye-laws of the said society only one member from a family could be admitted to the membership of the society. According to the appellant, Girdharilal had already been allotted one plot in his name, however, with a view to get another plot, the same was purchased by Girdharilal in his brother in law's name who is

defendant no.1. With this contention the appellants filed a suit seeking a declaration that the appellants are absolute owners and the defendant no.1 is only a Benamidar. A prayer for injunction was also made. The Trial Court has dismissed the suit so also the First Appellate Court has dismissed the appeal. Hence, this Second Appeal.

2. A perusal of the judgment of the First Appellate Court reveals that Girdharilal had, no where during his life time, claimed the suit property as his absolute property by terming the defendant no.1 as a Benamidar. The property was purchased by defendant no.1 in the year 1962 and belatedly after the death of Girdharilal the suit has been filed in the year 1994. It is further brought on record by the defendant no.1 that he was very much employed with BEST and drawing permanent monthly salary. Having regard to the material on record, it has been held by both the Courts below that defendant no.1 is the real owner and not a Benamidar.

3. The learned counsel for the appellants submits that the Courts below have not properly appreciated the evidence on record. I do not

MST

agree with the said submission. Barring the ipse dixit of the appellant, there is no material and evidence on record even to remotely infer that defendant no.1 is not the real owner but is the Benamidar. Hence, there is no merit in the appeal. The same is summarily dismissed.

(A.P.DESHPANDE, J.)